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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,750	05/25/2001	Yuichi Shirota	4041J-000385	4254

27572 7590 07/15/2003

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/15/2003

/o

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/865,750

Applicant(s)
Shirota et al.

Examiner
Ljiljana V. Ciric *LC*

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 2, 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30, 39, and 40 is/are pending in the application.
- 4a) Of the above, claim(s) 2, 3, 6-13, 15, 17, 18, 21-28, and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 14, 16, 19, 20, 29, 39, and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 25, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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DETAILED ACTION

Response to Amendment

1. This Office action is in response to the amendment and arguments filed on April 2, 2003.
2. Claims 1 through 30, 39, and 40 remain in the application. Of these, claims 2, 3, 6 through 13, 15, 17, 18, 21 through 28, and 30 remain withdrawn from consideration, whereas claims 39 and 40 are new. Claims 1, 4, 5, 14, 16, 19, 20, and 29 have been amended.
3. The amendment filed on April 2, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: that the cold accumulator of the elected first species or the embodiment of Figures 1 and 2 has therein a cold accumulating material *that is sealed separately from the refrigerant of the refrigerant cycle* as now newly recited in base claims 1 and 16 which are supposed to be readable on the elected first species or the embodiment of Figures 1 and 2.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

4. Applicant's arguments filed on April 2, 2003 relating to the previously cited prior art rejections of the claims have been fully considered but they are moot in view of the new grounds of rejection presented hereby on the grounds of new matter introduced into the claims.

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Applicant's argument that the claims have been amended to overcome the previously cited rejections under 35 U.S.C. 112, second paragraph, are not persuasive. For example, whereas the examiner noted in the previous Office action that the limitations "a cold accumulator which is disposed between a downstream side of the cooling heat exchanger and an upstream side of the air mixing door in the air flow direction to be cooled by cold air after passing through the cooling heat exchanger" are not clear as written, thus rendering claims 1 and 16 and all claims depending therefrom indefinite, applicants left these limitations almost intact and merely added additional unclear limitations thereto as noted in greater detail below.

Election/Restriction

5. Claims 2, 3, 6 through 13, 15, 17, 18, 21 through 28, and 30 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to the non-elected second through eighteenth species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 7.

Specification

6. Receipt and entry of the amended abstract is hereby acknowledged.

Claim Rejections - 35 U.S.C. § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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8. Claims 1, 4, 5, 14, 16, 19, 20, 29, 39, and 40 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added limitations to each of base claims 1 and 16 reciting that that the cold accumulator has therein "a cold accumulating material *that is sealed separately from the refrigerant of the refrigerant cycle*" are not supported relative to the elected first species or the embodiment of Figures 1 and 2 by the corresponding originally filed description and drawings. For example, Figure 2, which shows a detail of the cold accumulator, only shows an air passage and cold accumulating material sealed therefrom between plates 41 and 42, but fails to show the cold accumulating material as being sealed from any refrigerant conduits. Thus, the added limitations constitute new matter.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 4, 5, 14, 16, 19, 20, 29, 39, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, still fail to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and contain grammatical and idiomatic errors which render them unclear.

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For example, with regard to claim 1 as written, the limitations “the cold accumulator having therein a cold accumulating material *that is sealed separately from the refrigerant of the refrigerant cycle*” are not clear as written, thus rendering indefinite claim 1 and all claims depending therefrom. First of all, it appears that process of making steps are being incorporated into apparatus claims. Second of all, looking to the originally filed Figures 1 and 2 and to the corresponding section of the specification, there appears to be no explanation nor support for this recitation relative to the elected first species; thus, it is even less clear which particular structure if any corresponds to the cold accumulating material being sealed separately from the refrigerant of the refrigerant cycle in Figure 2, for example; the accumulator shown in Figure 2 fails to show any structure containing refrigerant. Claim 16 as written contains the same limitation and, along with all claims depending therefrom, is similarly rendered indefinite thereby.

The above is an indicative, but not necessarily an exhaustive, list of 35 U.S.C. 112, second paragraph, problems. Applicant is therefore advised to carefully review all of the claims for additional problems. Correction is required of all of the 35 U.S.C. 112, second paragraph problems, whether or not these were particularly pointed out above.

Allowable Subject Matter

11. Since claims 1, 4, 5, 14, 16, 19, 20, 29, 39, and 40 contain both new matter and are characterized by indefiniteness problems, the non-application of art against these claims should not be construed as an indication that the claims contain allowable subject matter.

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Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Ghodbane et al.* discloses a three-fluid vehicular heat exchanger wherein the refrigerant loop is sealed from the other two fluids.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

June 16, 2003



LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3743